



Jonathan S. Abernethy
212 707 1322
jabernethy@cohengresser.com

June 15, 2020

VIA ECF

The Honorable Vincent Briccetti
United States District Court Judge
Southern District of New York
300 Quarropas Street
White Plains, New York 10601

APPLICATION GRANTED:

The Court grants leave to file Exhibits A through K to the declaration of Jonathan S. Abernethy, Esq. (Doc. #97) UNDER SEAL. The Clerk is directed to accept these exhibits for filing under seal.

SO ORDERED:

Vincent L. Briccetti, U.S.D.J. 6/15/2020

Re: United States v. Duane Kirby (7:18-cr-00585-VB)
Letter-Motion to Seal

Dear Judge Briccetti:

Our client, Mr. Duane Kirby, seeks to move the Court for compassionate release under 18 U.S.C. § 3582(c)(1)(A)(i) based on his recent diagnosis of pulmonary sarcoidosis or lymphoma. Mr. Kirby's motion is supported by several exhibits, Exhibits A through K, which include his detailed medical records. We respectfully submit this letter to request that the Court grant leave to file these medical record exhibits under seal.

Courts regularly hold that a person's "considerable privacy interest" in his sensitive medical information outweighs the public's right of access to judicial documents. *Gutierrez v. Dubois*, 2020 WL 3072242, at *10 (S.D.N.Y. June 10, 2020); *see also United States v. Madoff*, No. 09 Cr. 213 (DC), 2020 WL 3001037, at *6 (S.D.N.Y. June 4, 2020) (sealing medical records filed in support of a motion for compassionate release). In addition, Your Honor's Individual Rules of Practice recognize that medical records are private documents that may be redacted in sentencing submissions without application to the Court.¹

On June 12, 2020, we conferred with AUSA Gillian Grossman regarding the sealing of these exhibits. AUSA Grossman informed us that the government has no objection to sealing Mr. Kirby's medical records.

¹ *See Individual Practices of Judge Vincent L. Briccetti*, attachment B (revised Feb. 3, 2020), https://www.nysd.uscourts.gov/sites/default/files/practice_documents/VB%20Individual%20Practices.REVISED%202.3.2020_0.pdf.



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Therefore, we respectfully request that the Court grant leave for Exhibits A through K, submitted in support of Duane Kirby's motion for compassionate release, to be filed under seal. We further request that the Court (1) direct the Clerk of the Court to seal these exhibits upon service on him of an endorsed copy of this letter and (2) direct that, absent further order of the Court, the Clerk shall deny access to these documents in this matter to anyone except counsel of record to the parties to this case, a party, and any representative of counsel of record to a party upon presentation to the Clerk of written authorization from said counsel.

Thank you for your consideration of this request.

Respectfully submitted,

/s/ Jonathan S. Abernethy

Jonathan S. Abernethy

cc: Gillian Grossman, A.U.S.A. (via ECF and email)